



April 1, 2010

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1384, Truth In Lending Act, Regulation Z

Dear Ms. Johnson:

We are writing to express our concern with certain aspects of the latest proposed changes to Regulation Z scheduled to take effect on August 22, 2010. As discussed more fully below, we request that the Board of Governors of the Federal Reserve System (the "Board") take our concerns into account in establishing the regulations governing the reasonableness and proportionality of penalty fees—particularly late payment fees. For the reasons below, we believe that customers will be best served by a balanced approach. If late payment fees are set too low, cardholder pricing will increase for all customers, customer benefits will be reduced and retail sales will suffer.

Background

Lowe's is a home improvement retailer with 1,700 locations and 210,000 employees. Like many other retailers, we have arranged for a bank to provide "private label" and co-branded credit cards to our customers that can be used to make purchases in our stores. Our private label/co-brand credit program (the "Program"), including the entire structure and pricing of the Program, is designed to enhance customer loyalty, provide customer benefits and drive our retail sales. It also saves us money because we settle private label sales directly with our bank partner and do not pay interchange on those sales.

Today, our private label and co-brand customers enjoy no interest financing for up to six and twelve months, in addition to other periodic offers that provide savings to our customers. These promotional financing offers are based on the economics we have in place with our bank partner. There is no annual fee on any of our cards. Private label credit card sales account for over 20% of our total sales. If the late payment fees are set too low we will be required to cut back on the financing offers impacting both our cardholders and our retail sales.

Fairness Concerns

The Board of Governors seems to believe that APR pricing is more transparent than late payment fees. We disagree and believe that consumers understand the costs of late fees especially because of the required disclosure of the year to date amount of late fees on periodic

billing statements. If late fees decrease, we expect APRs to increase. From a fairness perspective, we do not believe that increasing APRs would be better for our customers, since that affects all customers and not just those paying late.

Late fees are avoidable. They are clearly disclosed in the Schumer boxes and under new regulations, on every billing statement. And as we understand it, customers who pay late default at a higher rate than customers who do not pay late. Moreover, customers now have every opportunity to pay on time, including fixed due dates and at least 21 days from the time the bill is mailed until the payment due date. This is the case even though a large number of our customers pay online and do not need to factor in mailing time.

In short, we do not believe it is fair to charge our loyal customers, who have done nothing wrong and have handled their accounts responsibly, more money in order to charge less to customers who are in fact higher risk and have defaulted on their obligations.

Implications

While we understand the need for balance in setting the amount of the safe harbor, we are concerned that the political environment may lead the Board to set the amount too low. In addition to the above fairness concerns, setting the safe harbor amount for late fees too low would have the following undesirable implications:

- We would be unable to afford to provide an equal level of benefits and no interest financing offers to our credit card customers as we provide today, or we would have to charge more to everyone for those benefits. You would leave us no choice but to work with our partner bank to raise credit card costs in other ways, or to cut back on customer benefits.
- Certain credit segments may no longer qualify for credit and credit availability will shrink—this will hurt our sales as well as the customers' ability to get credit to purchase what they need.
- If the late fee is not high enough to deter defaults, we and our bank partner may each suffer the adverse financial consequences of the higher losses. These higher losses would otherwise be unnecessary and would be created by a lack of deterrence. Having a safe harbor that is too low would only create litigation and regulatory risk for any bank that wants to use the deterrence basis of setting reasonable late fees.
- General purpose credit card issuers whose cardholders generally carry higher balances and are required to make higher payments and who make a larger proportion of their income on annual fees and interchange will be benefited while private label card programs will disproportionately suffer. Because our private label program is so important to our sales and is less expensive to us than other tender types, we believe this is an important consideration.

Suggestions

We believe a flat safe harbor dollar amount (in addition to the 5% of the required minimum payment, whichever is higher), as the Board has proposed, is absolutely necessary to ensure adequate deterrence and to promote fairness. It would not be good for anyone if losses were to increase as a result of an artificially low safe harbor.

We suggest the amount of the flat safe harbor be no less than \$29. We appreciate that the Board is collecting data as a basis for the safe harbor, but we also think the Board must consider today's marketplace reality as a starting point. If the current late fee levels are lowered to the \$29 range, late paying customers would get a very meaningful benefit and responsible customers who pay on time would still have to shoulder a significant cost they are not paying today. In contrast, setting the safe harbor below this range would be too dramatic a cost shift for customers and our industry as a whole. We expect that such a dramatic shift would significantly reduce the availability of credit and the benefits of private label programs for retailers and customers. Unless the Board's intention is to curtail credit availability (and accordingly, retail sales), it should be very cautious in choosing how far to change the economics of today's marketplace.

In addition to our comment on the substantive rules, we have one transition rule request. Because we offer credit at the point of sale, we are very concerned about the timeline involved in changing out our credit applications in time for the August 22 implementation deadline. We already have plans to reprint and redistribute all collateral for the July 1 effective date of the Schumer box and other changes. Given the fact that the proposed rules came out behind schedule, it will not be possible for us to replace all applications again to reflect the penalty fee changes between the time the final rules are promulgated and August 22. For this reason, we ask that we be given a transition period of at least 120 days after the final regulations are promulgated to replace our credit applications. Our bank partner would of course comply with the substance of the rules as of the effective date—the transition is only to give us a chance to design, produce and distribute applications to our stores.

We appreciate the opportunity to comment and would be pleased to answer any question you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Tumillo", with a long horizontal flourish extending to the right.

Michael Tumillo
VP – Credit Services